IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.M.No.7150 of 2007 and
C.W.P.No.1846 of 2007

Date of Decision : May 02, 2007.

Dharambir Singh .... Petitioner

Vs.

State of Haryana and others .... Respondents

CORAM : HON'BLE MR.JUSTICE J.S.KHEHAR.
HON'BLE MR.JUSTICE L.N.MITTAL.

* * *

Present : Mr.N.C.Kinra, Advocate
for the petitioner.

Mr.Sanjeev Bansal, Addl.A.G., Haryana
with Mr.Surinder K.Bishnoi, DAG, Haryana
for the respondents.

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J.S.KHEHAR, J. (Oral) :

C.M.No.7150 of 2007 :

C.M. is allowed. Replication is taken on record subject to all just exceptions.

C.W.P.No.1846 of 2007 :

The controversy in the instant writ petition pertains to the adverse remarks communicated to the petitioner, for the period from 1.4.2000 to 3.11.2000. An extract of the aforesaid remarks as has been reproduced in the written statement, is being naratted hereunder :-

"a) Discipline Average (Placed under

	suspension)
b) Integrity	*Doubtful*
c) Reliability	*Un-Reliable*
d) Moral Character	*Average*
e) Any other fault	*Use political pressure for the postings.*
f) General Remarks	*Average Official who believes more in Corruption and less in prevention of crime."*

Dissatisfied with the aforesaid remarks, the petitioner submitted a representation dated 4.6.2002, for the expunction thereof. The aforesaid representation was rejected by an order dated 30.04.2003. Unmindful of the aforesaid rejection, the petitioner made a second representation for the expunction of the same remarks on 8.5.2003. The second representation made by the petitioner, was accepted on 7.7.2003 by the then Director General of Police, Haryana, by an innocuous order, relevant extract of which is being reproduced hereunder :-

> "*Mercy petition/revision petition of SI Dharambir No.58/H now H/99 against the adverse remarks recorded in his ACR for the period from 1.4.2000 to 3.11.2000, has been considered and accepted. The adverse remarks in question are hereby expunged in the interest of principles of natural justice. Category of report is also upgraded as "Good". The representationist may be informed accordingly."*

On account of the fact that only one representation can be filed by an employee for expunction of his adverse remarks, whereas the petitioner had made a second representation, which was eventually accepted

on 7.7.2003, it was tentatively decided by the respondents to re-construct the adverse remarks communicated to the petitioner for the period from 1.4.2000 to 3.11.2000. Accordingly, a Show Cause Notice dated 21.8.2006 was issued to the petitioner. On the receipt of a reply thereto, the respondents passed the impugned order dated 12.12.2006 (Annexure P-6) by holding that the remarks, communicated to the petitioner, deserved to be reconstructed, on account of the fact that the said remarks were expunged on the basis of a second representation made by the petitioner, which was not permissible in terms of the instructions issued by the State Government. In so far as the aforestated conclusion drawn in the impugned order is concerned, the aforesaid issue has been adjudicated upon by us while deciding the case titled ***Vinod Kumar vs. State of Haryana (CWP No.9805 of 2006, decided on 4.4.2007)*** and in view of the order passed by us, there can hardly be any infirmity in the determination, rendered in the order passed on 12.12.2006, on the instant issue, namely, that a second representation is not competent for the expunction of the adverse remarks communicated to an employee.

Besides the aforesaid contention, learned counsel for the petitioner has advanced a second proposition for the expunction of the adverse remarks, communicated to the petitioner from the period from 1.4.2000 to 3.11.2000. It is the contention of the learned counsel for the petitioner that on the same allegations, on which the aforesaid adverse remarks were communicated to the petitioner, a regular departmental inquiry was also held against him, through a charge-sheet dated 14.12.2000 (Annexure P-12). It is also the contention of the learned counsel for the petitioner that on the culmination of the departmental inquiry, consequent upon the issuance of the aforesaid charge-sheet, the petitioner was exonerated by an order dated 11.4.2001 (Annexure P-9). It is, therefore, the contention of the learned counsel for the petitioner that in spite of the

impugned order dated 12.12.2006 (Annexure P-6), the adverse remarks communicated to the petitioner, for the period from 1.4.2000 to 3.11.2000 deserved to be expunged in terms of the decision rendered by this Court in *Randhir Singh, ASI Vs. State of Haryana and others (CWP No.867 of 2007, decided on 29.03.2007)*.

Having examined the second contention advanced by the learned counsel for the petitioner, and having perused the pleadings, as well as, the annexures appended thereto, we are of the view that the factual position on the basis of which, the second contention advanced by the learned counsel for the petitioner may be factually correct. It is, however, not for us to adjudicate upon this issue, unless a clear indication is apparent from the facts noticed in the pleadings. In view of the above, we consider it just and appropriate to require the competent authority to re-adjudicate this issue and pass an order thereon, in accordance with law, keeping in view the legal position expressed by this Court in Randhir Singh's case (supra). Needful be done within a period of two months from the date of receipt of certified copy of this order. It would be appreciated if the competent authority passes a well reasoned speaking order.

Disposed of accordingly.

Order dasti on payment of usual charges.

(J.S.KHEHAR)
JUDGE

May 02, 2007
monika

(L.N.MITTAL)
JUDGE